

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BRANDON PUGH, Plaintiff,  v.  BERKS COUNTY BOARD OF ELECTIONS, Defendant.	Civil Action No. 5:25-CV-03267
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**MOTION FOR CLARIFICATION**

NOW COMES Plaintiff, Brandon Pugh, by and through undersigned counsel, who hereby submits this Motion and states the following:

1. Plaintiff filed a Motion for a Speedy Declaratory Judgment Hearing, for a Preliminary Injunction, and Other Relief at ECF No. 7 (the “Motion”), the Grounds for Relief of which are incorporated by reference.
2. As stated on Page 3 of that Motion, the Defendant has to prepare the official ballot for the November 4, 2025 Municipal Election on or before September 20, 2025 in the absence of an administrative waiver from the U.S. Under Secretary of Defense. Therefore, time is of the essence, particularly if either party may seek appellate review of any final decision on the merits.
3. On July 11, 2025, the Court entered an Order at ECF No. 8 which “GRANTED IN PART” the Motion. The Court directed the Defendant to file an answer, or a Rule 12 motion, on or before July 18, 2025. Notwithstanding Plaintiff’s proposed Order to Show Cause [ECF No. 7-2], the Court’s Order did not schedule any hearing on the Motion, direct the Defendant to answer the Motion, or schedule and provide for a Civil Rule 16 conference.
4. Due to the possibility that Plaintiff must appeal by this Monday, based on the caselaw cited below, Plaintiff requests that the Court clarify, on or before Monday, August 11, 2025, whether it

has reserved consideration on the balance of the relief requested in the Motion at ECF No. 8 and, additionally, to promptly schedule a hearing on the preliminary injunction and to consolidate it with a hearing on the merits of a final injunction under Fed. R. Civ. P. 65(a)(2).

5. On August 4th, 2025, the Court entered a Notice of Initial Pretrial Conference scheduled for October 9, 2025. [ECF No. 17]. To postpone the pretrial conference to occur after September 20, 2025 — the deadline for Defendant to have prepared and published the official ballot for military voters under federal and State law — would in effect completely bar Pugh’s ability to obtain relief in this case.

6. The denial of a request for a preliminary appeal is immediately appealable as of right under 28 U.S.C. § 1292(a)(1). The Court’s Order creates a question whether there was a constructive denial of the balance of the Motion at ECF No. 7. Carson v. American Brands, 450 U.S. 79, 83 (1981) (court order had “the practical effect” of refusing a preliminary injunction). “A district court’s inaction in the face of extreme urgency and a high risk of serious, perhaps irreparable, consequences may have the effect of refusing an injunction.” A.A.R.P. v. Trump, \_\_\_ U.S. \_\_\_, 145 S. Ct. 1364, 1367 (May 16, 2025).

7. By granting the relief in this instant Motion, the Plaintiff will not have to pursue an interlocutory appeal at this time. Otherwise, Plaintiff must file a notice of appeal on or before Monday, August 11, 2025.

### **CONCLUSION**

**WHEREFORE**, based on the foregoing, Plaintiff respectfully requests that the Honorable Court grant this Motion and clarify its order at ECF No. 8, namely, that the balance of relief requested in Plaintiff’s Motion at ECF No. 7 is reserved, and that the Court promptly schedule a hearing on the preliminary injunction and consolidation with a final injunction on the merits under

Fed. R. Civ. P. 65(a)(2).

Respectfully submitted

**CORNERSTONE LAW FIRM, LLC**

Dated: August 5, 2025

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